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No. 94-

Supreme Court, U.S.
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IN THE

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OCTOBER TERM, 1994

ASTON A. BEADLE,

Petitioner,

v.

HILLSBOROUGH COUNTY SHERIFF'S OFFICE, A/K/A/ HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT, AND WALTER C. HEINRICH, AS SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Section 701(j) of Title VII of the Civil Rights Act of 1964 requires an employer to make reasonable accommodations, short of undue hardship, for the religious practices of its employees. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977). The questions presented are:

I. Where no collective bargaining imposed seniority system exists, whether an employer must do more than uniformly apply neutral work rules when such application places an uneven burden on Sabbath-keeping employees requiring them to choose between their religion and their job.

II. If an employer altered its neutral scheduling system to accommodate an employee's secular needs, such as schooling, may it withhold this method of accommodating an employee's religious needs?

PARTIES TO THE PROCEEDINGS

Petitioner: Aston A. Beadle

Respondents: Hillsborough County Sheriff's Office, a/k/a Hillsborough County Sheriff's Department, Walter C. Heinrich, as Sheriff of Hillsborough County, Florida

Walter C. Heinrich, the employer, as Sheriff of Hillsborough County, Florida, is an elected constitutional officer of the State of Florida and has control and supervision of the Hillsborough County Sheriff's Office and its employees. He therefore has no parent companies or subsidiaries. Petitioner makes this declaration pursuant to Supreme Court Rule 29.

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October Term, 1994

ASTON A. BEADLE,

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HILLSBOROUGH COUNTY SHERIFF'S OFFICE, A/K/A HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT, and WALTER C. HEINRICH, as Sheriff of Hillsborough County, Florida,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Aston A. Beadle petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Eleventh Circuit. The opinion and judgment of the court of appeals was entered on August 23, 1994. A Petition for Rehearing and Suggestions for Rehearing En Banc was denied on November 3, 1994. On January 26, 1995, Justice Kennedy entered an

order extending the time for filing a petition for writ of certiorari until March 31, 1995.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is reported at 29 F.3d 589 (11th Cir. 1994), and is reprinted in the App. at 1a-10a, *infra*.

The memorandum opinion of the United States District Court for the Middle District of Florida, Tampa Division, which was entered on October 1, 1994, is unreported and is reprinted in the App. at 19a-25a, *infra*.

JURISDICTION

Invoking federal jurisdiction under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e *et seq.*, and under 28 U.S.C. § 1331 (general federal question jurisdiction), the petitioner brought this suit in the United States District Court for the Middle District of Florida, Tampa Division. On October 4, 1993, the district court entered judgment on the merits in favor of the defendants. *See* App. at 26a, *infra*.

In response to petitioner's appeal, the Eleventh Circuit on August 23, 1994, entered a judgment and order affirming the district court's judgment. *See* App. at 1a-10a, *infra*. Thereafter a timely petition for rehearing and suggestions for rehearing en banc was filed with the court of appeals. The court of appeals on November 3, 1994, entered an order denying the petition for rehearing and suggestions for rehearing en banc. *See* App. at 11a-12a, *infra*. An application for extension of time within which to file a petition for a writ

of certiorari was presented to Justice Kennedy and on January 26, 1995, an order was entered extending the time for filing such a petition until March 31, 1995. *See* App. at 29a, *infra*.

The jurisdiction of this Court to review the judgment of the Eleventh Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e(j) provides:

> The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

42 U.S.C. § 2000e-2(a) provides:

> It shall be an unlawful employment practice for an employer -
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely

> affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(h) provides in pertinent part:

> Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, . . . provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin,. . .

STATEMENT OF THE CASE

A. Relevant Facts

Aston A. Beadle is a practicing member of the Seventh-day Adventist Church. A fundamental tenet of that faith is the prohibition against secular labor on its Sabbath from sundown Friday to sundown Saturday.

Beadle applied for a position in the detention department of the Hillsborough County Sheriff's Office in January of 1986. Upon learning he would be assigned to work during his Sabbath, Beadle informed the Department's commander of his need to be off work on his Sabbath. The Sheriff's Department was not covered by a collective bargaining agreement.

Beadle's scheduled days off were switched from Tuesday and Wednesday to Friday and Saturday pending an internal legal opinion on the Department's religious accommodation

duty. In April of 1986 the Sheriff's legal advisor, relying on this Court's decision in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), concluded the Department was not required by Title VII to accommodate Beadle by granting him permanent days off. Beadle was advised that since Department policy permitted shift trading, he was free to arrange for shift swaps with other employees (PX 12). Like other employees, he could also request use of vacation and compensation time (Fitch Dep. 77:18-78:6).

Job swaps, however, proved unworkable because many of the employees were working overtime and on special shifts (R6-62:6-16). Every time Beadle was scheduled to work on his Sabbath, he submitted a comp time leave request (R5-136:22-24). Eventually the Department denied all Beadle's leave requests despite the fact when Beadle was absent there were as many officers working as when he was on duty (R7-19:24-22:6; R7-53:19-55:5).

Finding job swaps and the use of comp time an unworkable accommodation, Beadle on May 12 requested a transfer to a bailiff position which would allow him to be off during his Sabbaths (PX 16). Beadle's supervisors, Lieutenant Deaton and Captain Davenport, recommended the assignment transfer (Davenport Dep. at 21:9-23:19). But Davenport's superior, Major Cook, informed Beadle he could not be transferred until he completed his year's probation (R5-73:17-74:25). However, it is uncontradicted that the Sheriff could have transferred Beadle to a bailiff's position. He had the authority to do so and had at times even hired bailiffs off the street (Heinrich Dep. at 16:19-18:3; R7-33:13-34:8; R7-58:3-59:13; Beadle 2/13/92 Dep. at 78:13; 81:10-84:7; 152:1-153:7).

Experiencing increasing scheduling difficulties, Beadle on August 7, 1986, applied for a recreation detail which also did

not require Sabbath work (PX 23; R5-82:16-84:9). Although it would not have caused any safety problem or other hazard to transfer Beadle prior to the completion of his probation, the Department refused to consider such a transfer (Cook Dep. at 57:20-58:22). Rather, the Department continued to insist Beadle had been accommodated for Title VII purposes through the neutral rotating shifts and job swaps.

Beadle was a conscientious employee, according to Lieutenant Deaton. He came to work on time and worked overtime when requested (Deaton Dep. at 69:18-71:12). Deaton advised Beadle it would actually be to the Department's advantage if he would work Sundays instead of Saturdays because Sundays were their busiest days. Beadle agreed to do so, but no action was taken (R5-72:20-73:6). Beadle informed the Sheriff he would work *any* day other than his Sabbath (Cook Dep. at 38:4-39:1).

On September 13 Lieutenant Deaton agreed to give Beadle Fridays and Saturdays off until otherwise instructed by his superiors. Shortly thereafter Deaton was overruled by Captain Davenport and so advised Beadle (R5-210:12-212:7; R6-125:14-21; Beadle 6/23/92 Dep. at 22:2-23:24; 38:8-39:22; 53:9-55:23) . Colonel Parrish admitted at the trial it was understandable Beadle would be confused about how he was to be accommodated during that time in his employment (R7-37:5-14; 37:21-39:21).

The Sheriff did accommodate employees attending school by scheduling them to work an undesirable shift, thus removing them from the rotating shift arrangement. However, the Sheriff refused to assign Beadle to such an undesirable shift, thus taking him off rotation, because "that would have been contrary to what guidance [there was] from legal." (R5-120:7-8; R7-49:16-52:16; Fitch Dep. at 25:1-29:24; 69:20-70:13).

Although no deputy ever complained about Beadle being accommodated and there was no evidence of coworker discontent (Parrish Dep. at 152:20-154:25), Colonel Parrish testified "to make an exception for him would open the door to exceptions for other people of any religion." (Parrish Dep. at 127:9-128:1) Captain Davenport echoed this position and instructed Lieutenant Deaton not to schedule Beadle off on Friday nights because it would set a bad precedent (R6-175:6-13; Davenport Dep. at 63:12-23). Despite Colonel Parrish's fears, no other deputy requested a religious accommodation (R7-47:23-49:15).

On November 10 Lieutenant Deaton transferred Beadle from squad 4 to squad 5 so Beadle could be off work during his Sabbath long enough to complete his probation, thus eliminating a departmental policy impediment to Beadle's transfer.[1] Because less officers were assigned to squad 5 than squad 4, the transfer did not result in bumping an officer and advantaged the Department by equalizing the two squads while at the same time accommodating Beadle's religious needs -- at no cost to the Department and without any suggestion of reverse discrimination (R7-39:22-43:8; R5-96:17-99:23; 193:3-194:3; Beadle 6/23/92 Dep. at 15-67:20).

Three days later, however, Beadle was told he would be fired unless willing to work on his Sabbath. Beadle refused and was terminated (R5-96:1-16; 99:25-100:4; 212:14-23).

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[1]In addition to a permanent accommodation by transfer to a bailiff's position, there were other positions in the Department that would not require Beadle to work on his Sabbath. They included the recreation detail; a medical unit position (Cook Dep. at 31:14-33:8; R6-86:25-87:25); and the "state desk" position preparing paperwork about inmates being transferred to state prison (Parrish Dep. at 85:10-86:9).

B. The EEOC Determination

On July 29, 1988, the Equal Employment Opportunity Commission issued its Determination (App. at 27a-28a) concluding that the Sheriff's Department

> failed to facilitate or foster an atmosphere in which voluntary substitutes could be made during Charging Party's observance of his sabbath. In addition, there were no efforts made to reassign the Charging Party to available duties which did not require him to work on his sabbath, even though the Charging Party had nearly completed his probationary period.

(*Id.* at 28a).

C. The Trial Court's Decision

The trial court found that Beadle had established a prima facie case under Title VII's religious accommodation requirements (App. at 20a). The court also found the "neutral rotating shift system [used by the Sheriff's Department] constituted a reasonable accommodation to Beadle within the meaning of Title VII." (App. at 22a-23a). According to the court,

> the Sheriff made reasonable accommodations within the neutral rotating shift system by affording Beadle the opportunity to use vacation, sick day and compensation time to the extent that his shift conflicted with his faith's Sabbath and to swap days with fellow officers. Further, to require the Sheriff to assign Beadle to a permanent shift which would exclude work on Saturdays would be to confer upon him a benefit exclusive of the benefits conferred

> upon his fellow jail deputies, which Title VII does not require, according to *Trans World Airlines, Inc. v. Hardison*.

(App. at 23a).

Relying on *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 (1986), the court rejected Beadle's claim that the Sheriff could have reasonably accommodated him by transferring him to a bailiff position. *Ansonia* held "where the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship." *Id.* at 68. (App. at 24a).

The trial court concluded "the bailiff position was unavailable to Beadle due to his failure to complete the one-year probationary period." (App. at 24a). Also, the court found that the recreational detail squad also required completion of the probationary period and was not a permanent position. (App. at 24a).

D. The Court of Appeals Decision

The court of appeals rejected Beadle's claim "that the Department's neutral rotating shift system and its authorization of shift swaps within the system were insufficient to meet the requirements of Title VII." (App. at 6a-7a). To determine whether the Department could have accommodated Beadle's beliefs without undue hardship, the court of appeals relying on *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 80-81 (1977), stated: "The Supreme Court, however, found that the seniority provisions contained in the collective bargaining agreement between TWA and the union provided such

accommodation." (App. at 7a). While acknowledging *Hardison* was concerned specifically with a bona fide seniority system, the court nevertheless concluded *Hardison* was not limited to bona fide seniority systems but rather was intended to apply more broadly to "the neutrality of the system utilized." (App. at 8a). Thus, the neutral rotating shift system and the Department's authorization of shift swaps were deemed by the court to satisfy Title VII's requirement (*id.*).

The court further held the Department's "authorizations of voluntary swaps . . . within neutral rotating shift systems constitute reasonable accommodations under Title VII." (App. at 8a-9a). Since it had found "that the Department reasonably accommodated Beadle's religious practices for purposes of Title VII," the court concluded it was not required under *Ansonia* to further consider whether any or all of the suggested accommodations, (transfers to bailiff or recreational detail positions) "would also qualify as 'reasonable' under the statute, or whether they would likely result in 'undue hardship' to the employer." (*Id.* at 9a).

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS' ERRONEOUS HOLDING THAT AN EMPLOYER SATISFIES ITS DUTY OF ACCOMMODATION BY SIMPLY ADHERING TO NEUTRAL WORK RULES RESULTS IN A CONFLICT AMONG THE CIRCUITS.

The decision below is in direct conflict with holdings of at least two other circuits: *Smith v. Pyro Mining Co.*, 827 F.2d

1081 (6th Cir. 1987), *cert. denied*, 485 U.S. 989 (1988)[2] (when an employee had a religious objection to trading shifts, permitting a religious observer to trade days off with other employees did not provide a reasonable accommodation); and *EEOC v. Ithaca Industries, Inc.*, 849 F.2d 116 (4th Cir. 1988), *cert. denied*, 488 U.S. 924 (1988) (although the employer demonstrated an effort to accommodate all employees assigned to work on Sunday, the court held this was not a reasonable accommodation because the accommodation was not aimed specifically at addressing the religious needs of the plaintiff). The *Smith* and *Ithaca* courts, unlike the Eleventh Circuit, refused to permit employers to satisfy their accommodation duty by merely adhering to neutral work rules.[3]

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[2]In *Smith* the employer implemented a neutral scheduling system that required each employee to work twenty-six Sundays per year. Prior to implementing this system, the employer announced that employees who objected to working Sundays could avoid the shift by arranging swaps with other employees. Because of Smith's religious beliefs, however, he refused to either work on Sunday or solicit a replacement and was consequently fired. *Smith*, 827 F.2d 1083-84. Thus, instead of permitting the employee to satisfy his accommodation duty by adhering to a neutral work place rule, the Sixth Circuit, unlike the Eleventh Circuit, required the employer to take affirmative action not resulting in undue hardship.

[3]In *Kendall v. United Airlines*, 494 F. Supp. 1380 (N.D. Ill. 1980), the court rejected the idea that neutral work rules contained in a collective bargaining agreement constitute an accommodation. The district court held that Title VII could not require the employer to revamp its schedule extensively by using means beyond those contained in the bargaining

Through this case the Eleventh Circuit has announced the renascence of the controversial holding in *Dewey v. Reynolds Metals, Co.*, 429 F.2d 324 (6th Cir. 1970), *aff'd by an equally divided court*, 402 U.S. 689 (1971). *Dewey* held that an employer was not required to provide a religious accommodation under Title VII where a non-discriminatory collective bargaining agreement existed and was executed in a "fair and equitable" manner. *Id.* at 329. In essence, *Dewey* found the existence of neutral work rules shielded the employer from making further accommodation for its employees' religious needs.

The following year, primarily in response to *Dewey*, section 701(j) was added to Title VII. Through this amendment Congress required employers to "make reasonable accommodation for employees whose 'religion' may include . . . beliefs such as Sabbath observance, which differ from the employer's . . . requirements regarding . . . schedules. . . . Failure to make such accommodation would be unlawful [absent] undue hardship." Section-by-Section Analysis of H.R. 1746, quoted in 118 Cong. Rec. 7167.

A. A Neutral Rotating Shift Is Not A Reasonable Accommodation.

Echoing the trial court's conclusion, the Eleventh Circuit held the Department's neutral rotating shift system afforded a reasonable accommodation to an employee whose religious beliefs precluded him from working from sundown Friday to sundown Saturday. The court observed "[t]he Supreme Court . . . [in *Hardison*] found that the seniority provisions

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agreement. However, it found Title VII required the employer to accommodate by other means, such a leave of absence.

contained in the collective bargaining agreement between TWA and the union *provided* such an accommodation." (App. at 7a) (emphasis supplied). The appellate court then suggested this finding was not restricted to seniority provisions but rather applied more broadly to all neutral systems employed by an employer for allocating weekend work (App. at 8a).

Hardison, however, did not hold that seniority provisions provide a *per se* accommodation. Such a decision would have affirmed *Dewey* and rejected section 701(j). *Dewey* found that the non-discriminatory internal policies of employers are immune from regulation. *Hardison* actually found the seniority "system itself represented a significant accommodation to the needs, both religious and secular, of all of TWA's employees." 432 U.S. at 78.

Hardison and *Dewey* were both concerned with the fair and nondiscriminatory implementation of a collective bargaining agreement and whether there was an intent to discriminate through one of its provisions. The *Hardison* Court did not, however, affirm *Dewey*. Unlike *Dewey*, *Hardison* concluded that the mere fact the contract met these non-discrimination requirements did not eliminate the duty of an employer to accommodate.

Before looking at seniority provisions, the *Hardison* Court first established that TWA had "tak[en] appropriate action to accommodate as required by Title VII." *Id.* at 77 (quoting from the district court in *Hardison*). The Court in *Hardison* accepted the district court's finding that "TWA had done all that it could do to accommodate Hardison's religious beliefs without either incurring substantial costs or violating the

seniority rights of other employees." *Id.* at 83 n.14.[4]

Both the trial court and court of appeals erred in finding the Sheriff met his Title VII religious accommodation obligation by maintaining a neutral rotating shift. Citing *Hardison*, the trial court stated "[t]he neutral rotating shift system has been found by the Courts to be an accepted form of accommodation under Title VII." (App. at 22a-23a). This illogical conclusion that a rotating shift -- which was the actual cause of Beadle's scheduling problems -- constituted a reasonable accommodation was based on a misreading of *Hardison*, 432 U.S. at 81-84. According to the lower court, *Hardison* holds "'[a]bsent a discriminatory purpose,' the operation of a neutral *scheduling* system . . . designed to meet the needs of all employees, 'cannot be an unlawful employment practice even if the system has some discriminatory consequences,'" quoting *Hardison*, 432 U.S. at 82 (emphasis added). (App. at 21a). But the language the judge paraphrased did not relate to neutral "scheduling," rather to neutral "seniority systems."

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[4]Other circuits have refused to embrace the Eleventh Circuit's recasting of *Hardison*. For example, in *Ward v. Allegheny Ludlum Steel Corp.*, 560 F.2d 579 (3d Cir. 1977), the court wrote extensively about the many actions taken by TWA to attempt an accommodation. *McDaniel v. Essex International*, 696 F.2d 34, 37 (6th Cir. 1982), recognized that *Hardison* "established that the employer could not accommodate the employee without violating seniority provisions . . . [and] in order to cover . . . [Saturday shifts] would have had to pay overtime or hire an extra employee." *McDaniel* observed that, unlike *Hardison*, there was no "issue of seniority, which has a special status under Title VII because of the exception contained in § 701(h), 42 U.S.C. 2000e-2(h)." *Id.*

The principal issue before this Court in *Hardison* was the correctness of the "the fundamental proposition that Title VII does not require an employer and a union who have agreed on a seniority system to deprive senior employees of their seniority rights in order to accommodate a junior employee's religious practices." *Id.* at 83 n.14.[5] This Court observed if TWA had circumvented the seniority provision by relieving Hardison of Saturday work and ordering a senior employee to replace him, it would have denied the latter his contractual shift preferences. As the Court noted, seniority systems are afforded special treatment under section 703(h) (42 U.S.C. § 2000e-2(h)), *id.* at 81, concluding the "'purpose of § 703(h) was to make clear that the routine application of a bona fide seniority system would not be unlawful under Title VII.'" *Id.* at 82, quoting *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 352 (1977).

Thus this Court directed its attention toward the tension between a seniority system incorporated within a collective bargaining agreement and the statutory duty of accommodation imposed by Title VII. Because seniority is inextricably intertwined with collective bargaining, which goes to "the core of our national labor policy," *Hardison*, 432 U.S. at 79, it is not to be subordinated to other policies such as Title VII "[w]ithout a clear and express indication from Congress." *Id.*

Both lower court opinions attempted to extend the protection afforded to bona fide seniority systems to all neutral work rules, such as a rotational scheduling system. However, the statute provides no equivalent protection for other neutral

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[5]*Hardison* specifically held that a collective bargaining agreement's seniority provision *may not be circumvented* in order to permit employees to be accommodated for their religious needs. 432 U.S. at 79.

work rules. *McDaniel v. Essex International*, 696 F.2d 34, 37 & 38 (6th Cir. 1982), in fact, rejected such a concept, recognizing the *Hardison* Court's deference to collective bargaining agreements was limited to seniority rights.[6]

In fact, section 701(j) of Title VII was "enacted with the stated purpose to protect Sabbath observers whose employers fail to adjust work schedules to fit their needs." *EEOC v. Ithaca Industries, Inc.*, 849 F.2d 116, 118 (4th Cir. 1988) (en banc). "The primary effect of . . . [section 701(j)] is to restrain employers from enforcing uniform work requirements that, although neutral in appearance, discriminate in effect against employees holding certain religious convictions." *EEOC v. E.I. DuPont DeNemoure & Co.*, 623 F. Supp. 15, 16 (E.D. N.C. 1985).

B. Permitting Shift Swaps Is Not A *Per Se* Accommodation.

In addition to finding a neutral rotating shift to be a

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[6]For instance, union security provisions are not shielded from unintentional discrimination although embedded in a collective bargaining agreement. *See Cooper v. General Dynamics*, 533 F.2d 163 (5th Cir. 1976), *cert. denied sub nom International Ass'n of Machinists and Aerospace Workers v. Hopkins*, 433 U.S. 908 (1977); *Burns v. Southern Pac. Transp. Co.*, 589 F.2d 403 (9th Cir. 1978); *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239 (9th Cir.), *cert. denied*, 454 U.S. 1098 (1981); *Anderson v. General Dynamics Convair Aerospace Div.*, 589 F.2d 397 (9th Cir. 1978), *cert. denied*, 454 U.S. 1145 (1982); *McDaniel v. Essex International*, 696 F.2d 34 (6th Cir. 1982); *Nottelson v. A.O. Smith Corp.*, 643 F.2d 445 (7th Cir. 1981), *cert. denied*, 454 U.S. 1046 (1981).

reasonable accommodation, the court of appeals concluded that mere "authorization of voluntary swaps instituted by employers within neutral rotating shifts systems constitute reasonable accommodations under Title VII." (App. at 8a-9a). The Sheriff's legal counsel issued a memorandum, relied upon by management, concluding the Department had no duty to accommodate Beadle but then stated:

> Other cases [in addition to *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977)] under the Civil Rights Act have looked to whether an employee was given a chance to secure his religious holidays off from work by trading shifts with other employees. Since the Sheriff's Office allows this shift trading practice, I see no problem with requiring the employee to work Saturdays and having him work out the details of his shift trades with other employees.

(PX 12).

Both courts below decided that *permitting* an employee to swap shifts, pursuant to a neutral work policy, constituted a reasonable accommodation. Both held because a reasonable accommodation had been provided, the inquiry was at an end (App. at 9a).

By following defective legal advice, the Department failed to make a sufficient accommodation under *any* reasonable concept of accommodation. The Eleventh Circuit then held that an employer may escape its responsibility while making no accommodation. This is accomplished by shifting the accommodation burden imposed by § 701(j) on employers to the religious observer and its other employees. Congress never contemplated compliance by such inaction.

Although the Department had a policy allowing all employees, including Beadle, to trade shifts, uncontradicted testimony confirms other deputies were unwilling to swap shifts with Beadle. According to the command officer of the Morgan Street Jail where Beadle worked, Beadle "had used up deputies that did accommodate him at first." (R6-75:6-76; 2; 76:12-21; 77:1-8; Cook Dep. at 37:5-38:10). The officer acknowledged it was difficult for Beadle to find deputies to trade with him because many of the employees were working overtime and on special shifts (R6-62:6-16).[7]

In some circumstances, permitting voluntary swaps may provide an effective means of accommodation. But once the Sheriff became aware that job swaps were no longer a feasible means of accommodation, neither *Ansonia* nor section 701(j) excused the Sheriff from further accommodation efforts.

What makes this case especially disturbing is Beadle's lower-level supervisors had determined neutral rotating shifts, job swaps, and compensatory time would not eliminate Beadle's problem. Yet they responded with other successful, no-cost accommodations until countermanded by upper management (R 5-210:12-212:7; R 6-125:14-21; R 7-37:5-39:21; Beadle 6/23/92 Dep. at 22:2-23:24; 38:8-34:22; 53:9-35:23). In fact, when Beadle was fired, his immediate supervisor was accommodating him without complaint by, or displacement of, coworkers (R 7-39:22-43:8; DX 1).

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[7]Lieutenant Deaton testified Beadle was unable to find anyone to swap with him, and the Department no longer allowed compensatory time to be used (R6-172:21-173:14). Beadle's squad sergeant also testified deputies were unwilling to exchange their days off with Beadle (Deitch Dep. at 40:13-41:16).

The Sixth Circuit recognized in *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1087-88 (6th cir. 1987), Congress repudiated *Dewey* when enacting the provisions of section 701(j). In *Smith* the company argued "that its consent to shift swapping, supplemented by its 'Open Door Policy,' was sufficient to satisfy its duty to reasonably accommodate Smith's religious beliefs." *Id.* at 1086. The district court, however, held that Pyro had to make an affirmative effort to reasonably accommodate Smith by arranging a swap for him." *Id.*

The court of appeals in *Smith* recognized that the issue raised there was very close to that raised in *Dewey*. *Id.* at 1087. The question before the court was "whether an employer reasonably accommodates an employee by allowing the employee to arrange a shift trade himself when the employee considers it a sin to arrange such a swap." *Id.* at 1088. The court concluded that in such circumstances the company had not met its Title VII obligation and must further attempt accommodating Smith unless such attempts would pose an undue hardship. *Id.* Thus, *Smith* rejected both the concept that neutral work rules themselves constituted a reasonable accommodation and also inferentially concluded that if an "accommodation" in the form of an allowance for shift swapping did not resolve the scheduling conflict, the employer had the affirmative duty to try alternative means of accommodation.

C. A Reasonable Accommodation Must Necessarily Eliminate The Conflict.

The Eleventh Circuit has misread *Ansonia*. It fails to distinguish between actual accommodation through the elimination of the conflict which *Ansonia* involved and a system of self-accommodation under a job swap arrangement which fails to solve the problem. In *Ansonia* the conflict

between religious needs and employment demands was reconciled. *Ansonia* considered whether Title VII entitled an employee to his preferred accommodation; it in no way established that a self-accommodation system constituted a per se satisfaction of the employer's obligation under section 701(j) of Title VII. The Ninth Circuit in *American Postal Union, San Francisco Local v. Postmaster General*, 781 F.2d 772, 775-76 (9th Cir. 1986), likewise affirmed the obligation of an employer to take an active accommodation role.[8]

The Eleventh Circuit's decision permits an employer: to do nothing; to make no adjustment; to take no action to accommodate an employee's religious beliefs, regardless of whether such action would cause the employer undue hardship. The employer need only have a neutral system in place, such as a neutral rotating shift, and a permissive attitude toward voluntary job swaps. This is not sufficient accommodation under section 701(j), especially when coworkers are unwilling or unable to voluntarily swap shifts with the religious observer. This Court in *Ansonia* never adopted such an approach to accommodation.

Title VII requires more. The "adopt[ion] [of] a week-to-week, wait-and-see posture . . . amounted to no accommodation at all. All that was in place was an ad hoc arrangement contemplating that the inevitable collision between . . . [Beadle's] religious beliefs and the [Sheriff's]

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[8]The EEOC *Guidelines on Discrimination Because of Religion* interprets Title VII as requiring "employers . . . [t]o facilitate the securing of a voluntary substitute . . . ." 29 C.F.R. § 1605.2(d)(1)(i). It also requires the employer to "consider whether or not it is possible to change the job assignment or give the employee a lateral transfer." 29 C.F.R. § 1605.2(d)(1)(iii).

work schedule [which] would be dealt with when it arose." *EEOC v. Arlington Transit Mix, Inc.*, 957 F.2d 219, 222 (6th Cir. 1991). Upper management waited for the axe to fall on Beadle, then wielded the axe at a time when lower level supervision had arranged an accommodation with absolutely no cost or hardship to the Sheriff's office or to any co-worker.[9] If such inaction satisfies the religious accommodation provisions of Title VII, then that law is impotent; and religious freedom cannot be protected in the work place. In short, Sabbatarians "need not apply."

Several courts have held for an accommodation to be reasonable, it must eliminate the conflict between the

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[9]Beadle asserts that the one-shot accommodation concept sanctioned by the Eleventh Circuit makes a mockery of Title VII's equal employment opportunity principle. Quoting *Haring v. Blumenthal*, 471 F. Supp. 1172 (D. D.C. 1979), *Brown v. General Motors Corp.*, 601 F.2d 956, 961 (8th Cir. 1979), stated:

> Unless the statutory mandate is to be rendered meaningless, it must be held to provide that until facts or circumstances arise from which it may be concluded that there can no longer be an accommodation without undue hardship, the employee's religious practices are required to be tolerated.

Under *Brown* the proper time frame of required accommodation continues until the moment when the employer can no longer provide an accommodation without experiencing undue hardship. This Court needs to clarify whether *Ansonia* is nevertheless consistent with *Brown*'s accommodation holding particularly when an earlier proffered accommodation proves unworkable and hence unreasonable.

employee's religious practices and his work requirements. Although not directly deciding the reasonableness of an accommodation that fails to eliminate the employee's religious conflict, Justice White sitting by designation and writing for the court in *Lee v. A.B.F. Freight Sys., Inc.*, 22 F.3d 1019, 1023 n.4 (10th Cir. 1994), observed: "At least two circuits have determined that, under *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 . . . (1986), a reasonable accommodation is one that *eliminates* the employee's conflict between his religious practices and work requirements. *Cooper v. Oak Rubber Co.*, 15 F.3d 1375, 1380 (6th Cir. 1994); *Wright v. Runyon*, 2 F.3d 214, 217 (7th Cir. 1993), *cert. denied*, . . . 114 S. Ct. 1077 . . . (1994)." (Emphasis in original.) *See also EEOC v. Universal Mfg. Corp.*, 914 F.2d 71, 74 (5th Cir. 1990), where the court stated "[t]he *Ansonia* Court did not leave the employer free to choose an unreasonable form of accommodation over a reasonable one;" *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6th Cir. 1987), which held "[i]f the employer's efforts fail to eliminate the employee's religious conflict, the burden remains on the employer to establish that it is unable to reasonably accommodate the employee's religious beliefs without incurring undue hardship;" and *American Postal Workers Union, San Francisco Local v. Postmaster General*, 781 F.2d 772, 776 (9th Cir. 1986), where the court found the employer bears the burden of establishing that the proffered accommodation "effectively eliminates the religious conflict faced by a particular employee."

A recent Fourth Circuit decision found an employer's offer "to reduce the number of working Saturdays to as few as possible would not accommodate an employee whose religion prohibits working on any Saturday." *Benton v. Carded Graphics, Inc.*, No. 93-1675, slip op. at 2, 1994 WL 249221 (4th Cir. June 9, 1994) (unpublished). Unless the offered

accommodation "eliminates the conflict," it is not reasonable.

According to the Eleventh Circuit, the mere existence of neutral work rules justifies an employer's refusal to actively assist in accommodating its employees' religious requirements. This distorts *Hardison* into something it is not. The *Hardison* Court excused *only* employers precluded by seniority systems from accommodating their religious observers. Here the Sheriff's "accommodation," based on erroneous legal advice, was just to offer Beadle its existing scheduling system which the record amply proves provided no resolution of Beadle's conflict.

The Eleventh Circuit's decision, conflicting as it does with the Fourth and Sixth Circuits in *Ithaca Industries* and *Smith* adds new confusion to the employer's work place religious accommodation duty which *Hardison* and *Ansonia* sought to clarify. What guidance will other circuits take from this now unsettled area of Title VII law? Further, it provides an open invitation to employers to do nothing to accommodate the religious needs of their employees. Therefore, this Court's action is desperately needed to provide a correct interpretation of section 701(j) and to resolve the dispute between the Eleventh Circuit and other circuits as to whether an employer has a duty to effectively eliminate conflicts between work rules and an employee's religious needs.

II. BECAUSE THE DEPARTMENT HAS ALTERED ITS NEUTRAL SCHEDULING SYSTEM TO ACCOMMODATE FOR SECULAR NEEDS, SUCH AS SCHOOLING, IT MAY NOT WITHHOLD THIS METHOD OF ACCOMMODATION FOR RELIGIOUS NEEDS.

The court of appeals' decision conflicts with *Ansonia Bd. of*

Educ. v. Philbrook, 479 U.S. 60 (1986), in another important way. The Sheriff allowed employees to attend school by scheduling them to work undesirable shifts. Under that arrangement, an employee was *not* rotated from shift-to-shift. However, the Sheriff did not place Beadle on such an undesirable shift (which Beadle was willing to accept) because "that would have been contrary to what guidance was from legal . . . ." (R 5-120:7-8; R 7-49:16-52:16; Fitch Dep. at 25:1-29:24; 69:26-70:13).

In *Ansonia*, 479 U.S. at 71, this Court reversed and instructed the lower court to determine whether the collective bargaining leave with pay provisions had been "doled out in a discriminatory fashion." Failure to provide a religious observer with the same employment benefits for religious needs as that provided for secular needs "would display a discrimination against religious practices that is the antithesis of reasonableness." *Id.* Similarly, if the Sheriff's Department permits deviation from the neutral rotating shift for secular reasons, such as schooling, it may not withhold the same type of accommodation for religious reasons. Consistent with *Ansonia*, the Sheriff must provide relief from a neutral work rule (such as a rotating shift) for religious needs if it provides relief for secular reasons.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests this petition be granted and a writ of certiorari issue to review the judgment and opinion of the Court of Appeals for the Eleventh Circuit.

Dated: March 31, 1995

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 93-3266

ASTON A. BEADLE,
Plaintiff-Appellant,

v.

HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT,
Walter C. Heinrich, Sheriff of
Hillsborough County, Florida,
Defendants-Appellees.

**Appeal from the United States District Court
for the Middle District of Florida**

Former employee of county prison brought suit against sheriff's department, contending that department violated Title VII by failing to accommodate his Seventh Day Adventist religious belief which precluded his working from sundown Friday to sundown Saturday, and by ultimately discharging him because of his refusal to work during that period. The United States District Court for the Middle District of Florida, No. 91-325-CIV-T-99A, Charles R. Wilson, United States Magistrate Judge, en-

tered judgment in favor of sheriff's department, and plaintiff appealed. The Court of Appeals, Morgan, Senior Circuit Judge, held that department's neutral rotating shift system and its authorization of shift swaps within system represented reasonable accommodation to plaintiff's religious beliefs, and thus his discharge from employment for refusing to work his sabbath did not violate Title VII.

Affirmed.

OPINION

Before COX, Circuit Judge, MORGAN, Senior Circuit Judge, and COLLIER*, District Judge.

MORGAN, Senior Circuit Judge:

Appellant Aston Beadle appeals a final judgment entered against him by the United States Magistrate Judge for the Middle District of Florida and in favor of the Hillsborough County Sheriff's Department ("Department").[1] The judgment rejects Beadle's contention that the Department violated Title VII of the Civil Rights Act of 1964 by failing to accommodate Beadle's religious practices and by ultimately discharging him from his employment with the Department because of his refusal to work on his sabbath. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we AFFIRM.

I. FACTUAL BACKGROUND

Appellant Beadle is currently, and has been at all times pertinent to this action, a member of the Seventh Day Adventist Church. As a practicing Seventh Day Adventist, Beadle does not engage in secular labor on his

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* Honorable Lacey A. Collier, U.S. District Judge for the Northern District of Florida, sitting by designation.

[1] The record indicates that the parties consented to trial by the Magistrate Judge.

sabbath—a period lasting from sundown Friday to sundown Saturday. Beadle, a former employee of the Hillsborough County Sheriff's Detention Department, brought this action after the Department scheduled him to work a Friday evening shift. Instead of completing his shift, however, Beadle left his post early in order to observe his sabbath. The Department subsequently terminated Beadle as a result of this action. Beadle's main contention at trial was that his discharge was unlawful under Title VII, as the Department had failed to "reasonably accommodate" his religious practices under the statute.

Beadle first became employed with the Sheriff's Detention Department in January of 1986, after responding to an advertised opening for employment. The Detention Department is responsible for securing the safety of the Hillsborough County prison and, as such, operates seven days a week, twenty-four hours a day, year round. Although Beadle was apparently aware of this fact when he applied for the position, he never mentioned his religious need for permanent days off until he had completed his required eleven-week training period at the Corrections Recruit Academy and had received his initial work schedule.

The schedule, made pursuant to a neutral rotating shift system used by the Sheriff's Department, indicated that Beadle's first shift required that he work on Fridays and Saturdays.[2] Dissatisfied with this requirement, Beadle

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[2] Under this neutral rotating shift system, detention employees were assigned to one of three overlapping 9.6 hour shifts each day. The day shift was from 7:00 A.M. until 4:36 P.M.; the evening shift was from 3:00 P.M. until 12:36 A.M.; and the midnight shift was from 11:00 P.M. until 8:36 A.M. Each deputy received two consecutive days off during the week. Work assignments rotated forward (i.e., day to evening; evening to midnight, etc.) every two months, while days off rotated backward (i.e., Friday-Saturday to Thursday-Friday; Thursday-Friday to Wednesday-Thursday, etc.) every 28 days.

contacted his commanding officer, Colonel David Parrish, and notified him of his religious conflict with the schedule. Parrish responded by suggesting that Beadle make a written request for permanent Fridays and Saturdays off for the Department to consider. Beadle complied, and the Department then submitted the question of whether the law required such an accommodation to its legal advisor for an opinion. While waiting for the legal opinion, the Department adjusted Beadle's work schedule so that he would not be required to work his sabbath.

In April of 1986, the Sheriff's legal advisor responded with an opinion stating that the Department was not required under Title VII to accommodate Beadle by granting him permanent days off. Based on this opinion, the Department advised Beadle that his request had been rejected. Beadle was told, however, that he was free to arrange for shift swaps with the other employees. To aid in this effort, the Department provided Beadle with a roster sheet and authorized him to advertise his need for swaps during daily roll calls and on the Department's bulletin board. The Department further allowed Beadle to request use of his sick days, vacation time and compensation time if he was unable to secure a swap.

Beadle, however, was not satisfied with the Department's response. He maintained that at the very least, his Department supervisors should actively assist him in finding replacements for shifts which conflicted with his sabbath. He also suggested as an alternative that the Department allow him to leave his post as a detention officer and to work instead as a bailiff or as a process server—jobs with the Department which traditionally required only a normal Monday through Friday work week.[3] The Department denied these requests and

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[3] These alternative posts suggested by Beadle, however, additionally required completion of a certain employment probationary period with the Department which Beadle had yet to satisfy.

adhered to its original position that Beadle had been sufficiently accommodated for Title VII purposes.

Beadle was actually able to negotiate a swap with his co-workers on only two occasions.[4] Moreover, the Department did not always approve Beadle's requests for use of vacation or compensation time because the jail was understaffed and the granting of some of these requests could have jeopardized jail security. On one occasion when Beadle was scheduled to work his sabbath and was unable to obtain approval to use his compensation time or to negotiate a swap for his shift, he simply failed to come to work. On a second occasion, Beadle abandoned his post during the middle of his shift, leaving two other deputies alone to supervise an area of dangerous inmates. This second incident ultimately led to Beadle's termination.

II. DISCUSSION

Title VII of the Civil Rights Act of 1964, as amended, prohibits an employer from discriminating against an employee on the basis of that person's "race, color, religion, sex or national origin." 42 U.S.C. § 2000e-2(a)(1). The term "religion" is defined in the statute as including "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate . . . employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). The issue presented for our consideration on appeal is whether the Magistrate Judge erred in finding that the Department reasonably accommodated the religious practices of its employee, Aston Beadle, for purposes of Title VII.[5]

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[4] The Magistrate Judge, however, attributed at least some of this difficulty to the fact that Beadle failed to adequately advertise his need for swaps.

[5] The Department does not dispute that Beadle's religious beliefs were sincere, nor does it argue with the Magistrate Judge's finding

The phrases "reasonably accommodate" and "undue hardship" are not defined within the language of Title VII. Thus, the precise reach of the employer's obligation to its employee is unclear under the statute and must be determined on a case-by-case basis. *See United States v. City of Albuquerque*, 545 F.2d 110, 114 (10th Cir.1976), *cert. denied*, 433 U.S. 909, 97 S.Ct. 2974, 53 L.Ed.2d 1092 (1977). To aid lower courts in their analysis of these cases, the Supreme Court has provided some guidance by generally defining "undue hardship" as any act that would require an employer to bear greater than a "de minimis cost" in accommodating an employee's religious beliefs. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 75, 97 S.Ct. 2264, 2272, 53 L.Ed.2d 113 (1977). The Court has further stated that compliance with Title VII does not require an employer to give an employee a choice among several accommodations; nor is the employer required to demonstrate that alternative accommodations proposed by the employee constitute undue hardship. *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68, 107 S.Ct. 367, 371, 93 L.Ed.2d 305 (1986). Rather, the inquiry ends when an employer shows that a reasonable accommodation was afforded the employee, regardless of whether that accommodation is one which the employee suggested. *Id.* We recognize and apply these guidelines in addressing the case before us.

Beadle argues that the Department failed to meet its duty to accommodate his religious practices. He contends that the Department's neutral rotating shift system and its authorization of shift swaps within the system were

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that Beadle established a prima facie case of religious discrimination according to the three part test set out in *Brener v. Diagnostic Center Hospital*, 671 F.2d 141, 144 (5th Cir.1982) (To establish a prima facie case of religious discrimination under Title VII, the plaintiff must present evidence sufficient to prove that (1) he had a bona fide religious belief that conflicted with an employment requirement; (2) he informed his employer of his belief; and (3) he was discharged for failing to comply with the conflicting employment requirement.).

insufficient to meet the requirements of Title VII. We disagree.

In *Hardison, supra*, the Supreme Court was presented with facts similar to those in this case. Hardison was a member of the Worldwide Church of God and also refrained from secular labor on Saturdays in observance of his sabbath. He was hired by Trans World Airlines (TWA) to work as a clerk in the "Stores Department" at its Kansas City base. This Department operated twenty-four hours per day, year round. Hardison was ultimately discharged because of his refusal to work Saturdays and argued that his discharge was unlawful under Title VII because TWA had failed to reasonably accommodate his religious practices. The Supreme Court, however, found that the seniority provisions contained in the collective bargaining agreement between TWA and the union provided such accommodation. Explaining its holding, the Court stated:

> It was essential to TWA's business to require Saturday and Sunday work from at least a few employees even though most employees preferred these days off. Allocating the burdens of weekend work was a matter for collective bargaining. In considering criteria to govern this allocation, TWA and the union had two alternatives: *adopt a neutral system*, such as seniority, a lottery, or *rotating shifts;* or allocate days off in accordance with the religious needs of its employees. TWA would have had to adopt the latter in order to insure Hardison and others like him of getting the days off necessary for strict observance of their religion, but it could have done so only at the expense of others who had strong, but perhaps non-religious reasons for not working on weekends.
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> . . . .
>
> Title VII does not contemplate such unequal treatment . . . . It would be anomalous to conclude that by 'reasonable accommodation' Congress meant

> that an employer must deny the shift and job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs others . . . .

Hardison, 432 U.S. at 80-81, 97 S.Ct. at 2274-75 (emphasis supplied).

Beadle attempts to distinguish the Court's holding in *Hardison* by arguing that there the Court was speaking not of a neutral rotating shift system, but rather of a "bona fide seniority system." While we recognize that *Hardison* specifically concerned the sufficiency of a seniority system under Title VII to determine employee eligibility for weekends off, we are not persuaded that the Court intended that its holding apply only to those systems. Rather, our reading of *Hardison* suggests that the Court was concerned primarily with the neutrality of the system utilized.

Moreover, the facts before us indicate that the Sheriff's Department did more than simply rely on its neutral rotating shift system to accommodate Beadle's religious practices. For example, it is undisputed that the Department allowed Beadle to arrange shift swaps with his co-workers. To aid Beadle in arranging these swaps, the Department provided him with an employee roster sheet which included all his co-worker's schedules. The Department also allowed Beadle to advertise his need for shift swaps during daily roll calls and on the Department's bulletin board. Numerous courts have relied on *Hardison* in holding that similar authorizations of voluntary swaps instituted by employers within neutral rotating shift systems constitute reasonable accommodations under Title VII. *See e.g., Brener v. Diagnostic Center Hosp.*, 671 F.2d 141 (5th Cir.1982); *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1088 (6th Cir.1987), *cert. denied,* 485 U.S. 989, 108 S.Ct. 1293, 99 L.Ed.2d 503

(1988); *United States v. City of Albuquerque,* 545 F.2d 110 (10th Cir.1976), *cert. denied,* 433 U.S. 909, 97 S.Ct. 2974, 53 L.Ed.2d 1092 (1977). Our interpretation of *Hardison* leads us to the same conclusion in this case.

Finally, we believe it important to note the Magistrate Judge's finding that Beadle failed to take full advantage of the accommodations offered to him by the Department. Although the Department made provisions for Beadle to announce his need for shift swaps during roll call and to advertise his need for swaps on the Department's bulletin board, Beadle did neither of these. While we recognize an employer's duty to reasonably accommodate the religious practices of its employee, we likewise recognize an employee's duty to make a good faith attempt to accommodate his religious needs through means offered by the employer. *See Matthewson v. Fla. Game & Fresh Water Fish Comm'n,* 693 F.Supp. 1044, 1050 (M.D.Fla.1988), *aff'd* 871 F.2d 123 (11th Cir. 1989) (citing *Ansonia,* 479 U.S. at 68, 107 S.Ct. at 372, in recognition of the employee's duty of "bilateral cooperation"); *see also Chrysler Corp. v. Mann,* 561 F.2d 1282, 1285 (8th Cir.1977), *cert. denied,* 434 U.S. 1039, 98 S.Ct. 778, 54 L.Ed.2d 788 (1978). We find that the record adequately supports the Magistrate Judge's finding that Beadle failed to satisfy this duty.

Because we find that the Department reasonably accommodated Beadle's religious practices for purposes of Title VII, we are not required to further consider whether any or all of the accommodations suggested by Beadle would also qualify as "reasonable" under the statute, or whether they would likely result in "undue hardship" to the employer. Following the Supreme Court's decision in *Ansonia, supra* 479 U.S. at 68, 107 S.Ct. at 372, the inquiry ends once the employer shows, as the Department has here, that a reasonable accommodation was afforded the employee.

III. CONCLUSION

We find that the Department's attempts to accommodate appellant Beadle's religious practices within the workings of its neutral rotating shift system were "reasonable" for purposes of Title VII. We, therefore, hold that Beadle's discharge from employment with the Department for refusing to work his sabbath was neither discriminatory nor unlawful. Accordingly, we AFFIRM the holding of the Magistrate Judge.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-3266

ASTON A. BEADLE,
Plaintiff-Appellant,

versus

HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT;
WALTER C. HEINRICH, Sheriff of
Hillsborough County, FL,
Defendants-Appellees.

On Appeal from the United States District Court for the Middle District of Florida

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

[Filed, U.S. Court of Appeals, Eleventh Circuit, Nov 3, 1994 (Clerk's Stamp)]

Before: COX, Circuit Judge, MORGAN, Senior Circuit Judge, and COLLIER*, District Judge.

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* Honorable Lacey A. Collier, U.S. District Judge for the Northern District of Florida, sitting by designation.

PER CURIAM:

☒ The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

☐ The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are also DENIED.

☐ A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ [illegible] R. Cox
UNITED STATES CIRCUIT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 91-325-Civ-T-99(A)

ASTON A. BEADLE,

Plaintiff,

-vs-

HILLSBOROUGH COUNTY SHERIFF'S OFFICE
a/k/a HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT
and WALTER C. HEINRICH, as Sheriff of
Hillsborough County, Florida,

Defendants.

OPINION

This is an action brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et. seq. (Title VII). The issue is whether the Hillsborough County Sheriff's Office ("Sheriff") fulfilled his obligation to accommodate the religious beliefs and practices of his employee, Aston A. Beadle, as to Sabbath observance, pursuant to Title VII. The case was tried to the Court on June 21-25, 1993.

Having considered the evidence and the applicable authority, the Court is of the opinion that judgment

should be entered in favor of the defendant based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

The plaintiff, Aston A. Beadle, is a member of the Seventh-Day Adventist faith. One of the tenets of the faith is the prohibition of work on the Sabbath, which commences at sundown on Friday and ends at sundown on Saturday. Seventh-Day Adventists refrain from routine work on the Sabbath, although a Seventh-Day Adventist may engage in emergency or humanitarian work on that day.

On August 15, 1986, Beadle abandoned his post while on duty as a detention deputy at the Hillsborough County Jail due to a conflict between his work schedule and his Sabbath. A pre-disciplinary hearing was conducted by the Sheriff on August 29, 1986. After the hearing, Beadle was terminated because of abandonment of his assigned post and failure to work his shift as assigned. Beadle contends that his termination violated Title VII because the Sheriff failed to make a reasonable accommodation of his faith's tenets. The Sheriff contends that it made efforts to reasonably accommodate Beadle's religious beliefs.

Beadle's life's work is in law enforcement. He was a law enforcement officer in Jamaica prior to coming to this country. His law enforcement work in Jamaica did not conflict with his long-standing religious affiliation. Beadle's grandparents were Seventh-Day Adventists. He attended the church as a child, although he subsequently drifted away from the religion. He returned to the faith in 1974 and has been involved in the faith to the present. The Sheriff does not contest the sincerity of Beadle's religious beliefs and practices. Beadle is an elder in his congregation and assists the pastor in various duties and in presenting the message of the faith. He has also been a Sabbath school teacher, a personal ministry

leader, and a deacon in his church. His children have attended schools operated by the Seventh-Day Adventists.

In 1985, Beadle was a taxi driver and came upon a newspaper advertisement for a jail deputy position. He applied and was selected upon the recommendation of Colonel David M. Parrish. At the time, he was a regular member of the Progress Village Seventh-Day Adventist Church.

The Sheriff of Hillsborough County, Florida is an elected constitutional law officer who employs between 2,000 to 2,100 employees, and is an employer within the meaning of 42 U.S.C. § 2000e(b). Within this group are 600-700 sworn personnel. The Sheriff operates in three departments: Law Enforcement Operations, Administration and Detention. Each department is under the command of a colonel, and the departments are further broken down into districts or divisions under the command of subordinate officers such as majors or captains. The position for which Beadle applied fell under the command of Detention. Included within Detention were the operation of three jail facilities: the maximum security Morgan Street Jail; the medium security Clark Street Jail; and the minimum security Orient Road Jail, in addition to two work-release centers. Included within the department of Administration were the bailiffs' positions and court personnel.

After he was hired, Beadle participated in a two to three month Academy training program and then learned of his subsequent jail assignment and scheduling. The assignments were made pursuant to the neutral rotating shift system used by the Sheriff. Under this system, detention employees were assigned to one of three overlapping 9.6 hour shifts each day. The day shift was from 7:00 A.M. until 4:36 P.M. The evening shift was from 3:00 P.M. until 12:36 A.M.; and the midnight shift was from 11:00 P.M. until 8:36 A.M. Each deputy

also had two consecutive days off each work week. Under this shift system, each deputy shift assignment would rotate forward (i.e., day to evening, evening to midnight, etc.) every two months, and days off would rotate backward, (i.e., Friday-Saturday to Thursday-Friday; Thursday-Friday to Wednesday-Thursday, etc.) every 28 days.

Upon learning of this schedule which included work on his Sabbath, Beadle discussed the matter with his superiors, including Colonel Parrish, and advised them that as a member of the Seventh-Day Adventist Church he could not be involved in regularly scheduled duties on his Sabbath as such would violate his conscience and religious beliefs. Colonel Parrish asked Beadle to make a request in writing and his request would be considered. Upon receipt of Beadle's written request, the Department then requested a legal opinion from its legal advisor. During the pendency of the decision, a decision was made to adjust Beadle's work schedule so that it would not conflict with his Sabbath.

The Sheriff's legal advisor rendered a legal opinion on April 10, 1986 which relied upon and discussed a Supreme Court decision entitled *TransWorld Airlines, Inc. v. Hardison*, 432 U.S. 63, 97 S.Ct. 2264, 53 L.Ed.2d 113 (1977). The legal opinion stated:

> Other cases under the Civil Rights Act have looked to whether an employee was given a chance to secure his religious holidays off from work by trading shifts with other employees. Since the Sheriff's Office allows such shift trading practice, I see no problem with requiring the employee to work Saturdays and have him work out the details of his shift trades with other employees.

The Department interpreted the legal opinion to mean that the Sheriff should accommodate Beadle by allowing shift trading with other detention deputies but not to

grant a permanent accommodation which would vary from the provisions of the rotating shift system. He was also granted an opportunity to use vacation, sick-day and compensation time when his work schedule conflicted with his Sabbath, to the extent available, and with prior approval.

Major Cook testified that their system of allowing swaps was an unusual event. This was the first time it had taken place for a significant period of time. Beadle was allowed to swap with anyone on his particular shift. He was successful on some occasions and unsuccessful on others. To assist Beadle in facilitating a swap, the Sheriff made access to a bulletin board available so that Beadle could use it to post his request. Also, a roster sheet was made available to him. Beadle failed to sufficiently avail himself of these opportunities. On his own, he was only able to successfully negotiate a swap with his fellow officers on two occasions.

Requests to use sick days, vacation, holiday and comp time to observe his Sabbath required pre-approval and on some occasions, his requests were denied. According to the Sheriff, the jail was understaffed and decisions to deny a request for compensation time was made in the interest of the security of the jail. Additionally, it was also difficult on some occasions to juggle the staff so as to ensure that a sufficient number of detention deputies were on duty at all times.

Beadle was unable to obtain compensation time or negotiate a swap for May 24, 1986. Although he was scheduled to work on that day, he failed to show for work because it conflicted with his Sabbath. He thereafter was able to use compensation time on May 31 and June 7, 1986, both Sabbath days. However, on August 15, 1986, when Beadle was assigned to a post containing high-risk inmates, Beadle abandoned the post during the middle of his shift, leaving the other two

deputies unattended in an area of dangerous inmates. This incident ultimately led to his termination.

During the course of his employment, Beadle suggested various alternatives that would accommodate his belief other than allowing requests for compensation time and swaps with fellow officers. Three alternative positions in particular were: (1) a position as a bailiff which primarily involved Monday through Friday work at the courthouse; (2) the Squad-10 Unit which is in charge of recreation, canteen, inmate properties, clinic, maintenance, etc., which is primarily a Monday through Friday position; and (3) a position in transportation as a process server. However, Beadle was advised that his one-year probationary status must expire before he could be eligible for transfer to such positions. In fact, the bailiff position was a very desired position within the Department and a number of factors, including seniority and performance, played a part in that assignment. These positions fell within the Administration Department. The Squad-10 and Transportation Departments were specialty assignments and not permanent assignments. In fact, the Squad-10 assignment no longer exists, according to the Sheriff. In any event, deputies are not ordinarily considered for assignment as a bailiff under a different department until the completion of his or her probationary period. Beadle was terminated prior to the completion of his probationary period.

Although Beadle's supervisors maintained their availability to assist Beadle in seeking swaps with his fellow shift officers, the officers expressed a reluctance to do so at the trial, maintaining that it would be coercive for supervisors to suggest to jail deputies that they swap with fellow deputies. A fellow deputy may be reluctant to deny a request by a supervisor for fear of jeopardizing his or her promotional opportunities.

At the trial, the Sheriff maintained that he fulfilled his obligation to accommodate the religious beliefs of Beadle

through the availability of the neutral rotating shift system, the allowance of swaps with fellow deputies, and the availability of vacation, sick day and compensation time.

After his termination, Beadle timely filed a charge of discrimination with the Equal Employment Opportunity Commission, received his right to sue letter, and initiated this action.

CONCLUSIONS OF LAW

The parties stipulated in their pretrial statement that this Court has jurisdiction of this action pursuant to 42 U.S.C. § 2000e-5(f)(3). The parties further agree that at all times pertinent to this action, the Sheriff was Beadle's "employer" and that Beadle was an "employee" as those terms are defined in 42 U.S.C. §§ 2000e(b) and 2000e(f), respectively. Additionally, the parties stipulate that Beadle satisfied the administrative prerequisites to maintaining this action.

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a)(1) makes it unlawful for an employer to discriminate against an employee or prospective employee on the basis of that individual's "race, color, religion, sex or national origin." The term "religion" includes "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

To establish a prima facie case of religious discrimination, a plaintiff must demonstrate: (1) that he or she had a bona fide belief that compliance with an employment requirement would be contrary to his or her religious belief or practice; (2) that he or she informed the em-

ployer about the conflict; and (3) that he or she was discharged or penalized for failing to comply with the conflicting employment requirement. *Brener v. Diagnostic Center Hospital*, 671 F.2d 141, 144 (5th Cir. 1982)[1]. *Murphy v. Edge Memorial Hospital*, 550 F.Supp. 1185, 1187-88 (M.D. Ala. 1982). The Sheriff does not contest the sincerity of Beadle's religious beliefs. Further, the Court finds from the evidence that Beadle's religious beliefs conflict with the Saturday work requirements of the Sheriff and that Beadle informed the Sheriff of the conflict. The Court further finds that based upon the record of facts, Beadle was discharged for failing to comply with the requirement that he work his assigned shift which conflicted with his Saturday Sabbath.

After a Title VII plaintiff has established a prima facie case, the defendant must show that it offered the plaintiff a reasonable accommodation of his or her religious practices, or that any accommodation of a plaintiff's practices would result in undue hardship to the employer. 42 U.S.C. § 2000e(j). *Murphy v. Edge Memorial Hospital, supra*, 550 F.Supp. 1188.

"The duty to accommodate requires that the employer take affirmative steps to explore and implement alternatives which would satisfy an employee's religious practices without (1) compromising the employment entitlements of other employees or (2) conferring a privilege on the employee the cost of which is more than **de minimis**." *Murphy v. Edge Memorial Hospital, supra*, 550 F.Supp. 1188.

Since a prima facie case is established, the issue now becomes whether the accommodations made by the

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[1] This opinion is a decision of the Fifth Circuit which is accorded only persuasive authority in the Eleventh Circuit. *See Bonner v. City of Prichard, Alabama*, 661 F.2d 1206 (11th Cir. 1981) (en banc); *Stein v. Reynolds Securities, Inc.*, 667 F.2d 33, 34 (11th Cir. 1982).

Sheriff meet the requirements of Title VII. This issue is resolved by the decision of the United States Supreme Court in *TransWorld Airlines, Inc. v. Hardison, supra.* In that case, Larry G. Hardison, a follower of the Worldwide Church of God, sued TransWorld Airlines (TWA) and the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), contending that TWA violated Title VII by failing to reasonably accommodate his religious beliefs. Hardison, like Beadle, belonged to a religion requiring observance of the Sabbath from sundown Friday to sundown Saturday. TWA discharged him, without accommodating his requests to have these days off, since shift assignments at its Kansas City, Missouri facility were based on a seniority system in accordance with a collective bargaining agreement. Due to Hardison's comparatively low seniority, and the union's unwillingness to modify the system on Hardison's belief, Hardison's religious beliefs could not meet an accommodation absent payment of overtime to another substitute employee or forcing the supervisor to take Hardison's place. The facility to which Hardison was assigned operated 24-hours a day throughout the year.

The Supreme Court found that the evidence established an absence of volunteers to relieve Hardison on Saturdays, and to give him Saturdays off would have deprived another employee of his or her shift preference "at least in part because he did not adhere to a religion that observed a Saturday Sabbath." *TransWorld Airlines, Inc. v. Hardison, supra,* 432 U.S. at 81, 97 S.Ct. at 2274. The Court concluded: "Absent a discriminatory purpose", the operation of a neutral scheduling system which was designed to meet the needs of all employees, "cannot be an unlawful employment practice even if the system has some discriminatory consequences." *TransWorld Airlines, Inc. v. Hardison, supra,* 432 U.S. at 82, 97 S.Ct. at 2276. The Court found that an employer is not required by Title VII to alter such a neutral scheduling system to meet the religious practices of an employ-

ee, but may satisfy the reasonable accommodation requirement by demonstrating efforts to accommodate an employee within the neutral system. According to the Court in *Hardison*, "[i]t would be anomalous to conclude that by 'reasonable accommodation' Congress meant that an employer must deny the shift in job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others, and we conclude that Title VII does not require an employer to go that far." *Trans-World Airlines, Inc. v. Hardison, supra,* 432 U.S. at 81, 97 S.Ct. at 2274. The Court evaluates reasonable accommodation in light of the employer's ability to accommodate an employee within the framework of the system established without denying the benefits of the system to other employees or incurring a greater than **de minimis** cost. As stated in *Murphy v. Edge, supra,* an accommodation is not required under Title VII when: (1) the accommodation will deprive the benefits of the neutral scheduling system to any other employee, or (2) will require the employer to incur a greater than **de minimis** cost." *Murphy v. Edge Memorial Hospital,* 550 F.Supp. 1189.

As stated in *Williams v. Southern Union Gas Company,* 529 F.2d 483, 489 (10th Cir.), *cert. denied,* 429 U.S. 959, 97 S.Ct. 381, 50 L.Ed.2d 325 (1976), the phrases "reasonably accommodate" and "undue hardship" are relative terms that cannot be given any hard and fast meaning. "Each case necessarily depends upon its own facts and circumstances, and in a sense every case boils down to a determination as to whether the employer has acted reasonably." *United States v. City of Albuquerque,* 545 F.2d 110, 114 (10th Cir.), *cert. denied,* 433 U.S. 909, 97 S.Ct. 2974, 53 L.Ed.2d 1092 (1976).

The Court finds that the neutral rotating shift system constituted a reasonable accommodation to Beadle within the meaning of Title VII. The neutral rotating

shift system has been found by the Courts to be an accepted form of accommodation under Title VII. *See TransWorld Airlines, Inc. v. Hardison, supra. United States v. City of Albuquerque, supra.* The Court further finds that the Sheriff made reasonable accommodations within the neutral rotating shift system by affording Beadle the opportunity to use vacation, sick day and compensation time to the extent that his shift conflicted with his faith's Sabbath and to swap days with fellow officers. Further, to require the Sheriff to assign Beadle to a permanent shift which would exclude work on Saturdays would be to confer upon him a benefit exclusive of the benefits conferred upon his fellow jail deputies, which Title VII does not require, according to *TransWorld Airlines, Inc. v. Hardison.*

Because of the public health, safety and welfare implications of law enforcement work, conferring upon Beadle the privilege of a permanent day off each week in this circumstance is more than a **de minimis** requirement. Obviously, in any work place, there are accommodations that must be made without adherence to rigid regulations that operate in an unreasonable fashion. Employers must take into consideration such factors as military leave, pregnancy leave, sick leave, bereavement leave, vacation and religious holidays. However, the neutral rotating shift system was meant to accommodate the secular and non-secular needs of all employees of the Sheriff's work force. The operation of the Sheriff's Office is a 24-hour a day, 7-day a week, 365-day a year operation. Its purpose is to maintain a work-force that secures inmates and preserves the safety of the public. Detention involves a continuous routine of watching, listening and observing in a confining, stressful and dangerous environment. Mistakes can lead to death, escape or injury. Special permanent days off for an employee in particular could adversely affect staff morale and jeopardize safety and security. The allowance of a permanent weekly day off to an employee in a detention facility

ee in a detention facility which operates under a neutral rotating shift system is inconsistent with sound jail management.

Beadle argues that the Sheriff could have afforded him a reasonable accommodation by assigning him to a position as a bailiff. However, in *Ansonia Board of Education v. Philbrook,* 479 U.S. 60 107 S.Ct. 367, 93 L.Ed.2d 305 (1986), the Supreme Court stated "where the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship." *Id.*, at 68. *Ansonia* further provides that in enacting the reasonable accommodation requirement of Title VII, "Congress was understandably motivated by a desire to assure the individual additional opportunity to observe religious practices, but it did not impose a duty on the employer to accommodate at all costs." *Id.*, at 70 (citing *TransWorld Airlines, Inc. v. Hardison, supra*). Further, the bailiff position was unavailable to Beadle due to his failure to complete the one-year probationary period. The specialty squads including Squad-10 and transportation, also require completion of probationary status and they are not permanent positions. Therefore, they would not have permanently accommodated Beadle's needs.

In *United States v. Albuquerque, supra,* the Tenth Circuit stated that Courts should "go slow in restructuring . . . employment practices" when a public employer is in the business of "protecting the lives and property of a dependent citizenry". *Id.*, 545 F.2d at 114. In *Ryan v. United States Department of Justice,* 950 F.Supp. 458, 462 (7th Cir.), *cert. denied,* 112 S.Ct. 2309, 119 L.Ed.2d 230 (1991), when faced with an action by an FBI agent against the United States Department of Justice claiming religious discrimination under Title VII due to denial of Sabbath observance, the Seventh Circuit concluded:

"[c]ompelled, as it is by Title VII, to have one rule for all of the diverse religious beliefs and practices in the United States, the FBI may choose to be stingy with exceptions less the demand for them overwhelm it." *Id.*, at 462.

Based on the foregoing authority and analysis, the Court finds that the neutral rotating shift system used by the Sheriff in conjunction with the availability of the use of vacation, compensation and sick day time and swaps with fellow officers were reasonable accommodations sufficient to meet the requirements of Title VII in this case. Therefore, the Clerk is directed to enter judgment for the defendant.

ORDERED on this 1st day of October, 1993.

/s/ Charles R. Wilson
CHARLES R. WILSON
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Case Number 91-325-Civ-T-99A

ASTON A. BEADLE

v.

HILLSBOROUGH COUNTY SHERIFF'S OFFICE
a/k/a HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT
and WALTER C. HEINRICH as Sheriff of
Hillsborough County, Florida

JUDGMENT IN A CIVIL CASE

[Filed Oct 4, 1993, 1:32 pm, U.S. District Court, Middle District of Florida, Tampa Division (Clerk's stamp)]

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial before the Court. The issues have been tried and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that based on the opinion dated October 1, 1993, (Doc. 71) judgment is entered in favor of the defendant.

October, 4, 1993 DAVID L. EDWARDS, Clerk
By /s/ Jeanne L. Hueting, Deputy Clerk

M'FILM ROLL #106
DOCUMENT #550

APPENDIX E

[SEAL] Miami District Office
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Metro — Mall
One Northeast First Street, 6th Floor
Miami, Florida 33132
Phone (305) 536-4491

Charge No: 151 87 0199

Mr. Aston Beadle
1414 West Linebaugh
Tampa, Florida 33612 Charging Party

Hillsborough County Sheriff's Dept.
1301 N. Morgan Street
Tampa, Florida 33601 Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended.

All requirements for coverage have been met. Charging Party alleged that he was discriminated against in violation of Title VII in that Respondent failed to accommodate his religious beliefs and as a direct result he was discharged on November 13, 1986, from his position as a Deputy Sheriff. Charging Party had been employed in a probationary status as a Deputy Sheriff since January 13, 1986.

The evidence shows that Respondent failed to facilitate or foster an atmosphere in which voluntary substitutions could be made during Charging Party's observance of his sabbath. In addition, there were no efforts made to reassign the Charging Party to available duties which did not require him to work on his sabbath, even though the Charging Party had nearly completed

his probationary period and did not have any performance or job related problems. The investigation disclosed that the Respondent had never accommodated anyone in the past as a result of their religious belief.

Based on this analysis, I have determined that the evidence obtained during the investigation establishes a violation of Title VII of the Civil Rights Act of 1964, as amended.

Section 706(b) of Title VII requires that if the Commission determines that there is reason to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practices by informal methods of conference, conciliation, and persuasion. Having determined that there is reason to believe that violations have occurred, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. A representative of this office will be in contact with each party in the near future to begin the conciliation process. Disclosure of information obtained by the Commission during the conciliation process will be made in accordance with Section 706(b) of Title VII and Section 1601.26 of the Commission's Procedural Regulations. When the Respondent declines to enter into settlement discussions, or when the Commission's representative for any other reason, is unable to secure a settlement acceptable to the office Director, the Director shall so inform the parties in writing and advise them if [sic] the court enforcement alternative available to the Charging Party, aggrieved persons, and the Commission.

On Behalf of the Commission:

/s/ [illegible]
for Federico Costales
District Director

FC/AF/ca

DATE OF MAILING July 29, 1988

APPENDIX F

SUPREME COURT OF THE UNITED STATES

No. A-541

Aston A. Beadle,

Petitioner

v.

Hillsborough County Sheriff's Department, et al.

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including March 31, 1995.

/s/ Anthony M. Kennedy
Associate Justice of the Supreme
Court of the United States

Dated this 26th day of January, 1995.

APPENDIX G

PART 1605—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION

Sec.

1605.1 "Religious" nature of a practice or belief.

1605.2 Reasonable accommodation without undue hardship as required by Section 701(j) of Title VII of theCivil Rights Act of 1964.

1605.3 Selection practices.

Appendix A to §§ 1605.2 and 1065.3 Background information.

Authority: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.

§ 1605.1 "Religious" nature of a practice or belief.

In most cases whether or not a practice or belief is religious is not at issue. However, in those cases in which the issue does exist, the Commission will define religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. This standard was developed in *United States v. Seeger,* 380 U.S. 163 (1965) and *Welsh v. United States,* 398 U.S. 333 (1970). The Commission has consistently applied this standard in its decisions.[1] The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee. The phrase "religious practice" as used in these Guidelines includes both religious observances and practices, as stated in Section 701(j), 42 U.S.C. 2000e(j).

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[1] See CD76-104 (1976), CCH P 6500; CD 71-2620 (1971), CCH P 6283; CD 71-779 (1970), CCH P 6180.

§ 1605.2 Reasonable accommodation without undue hardship as required by Section 701(j) of Title VII of the Civil Rights Act of 1964.

(a) *Purpose of this section.*

This section clarifies the obligation imposed by Title VII of the Civil Rights Act of 1964, as amended, (sections 701(j), 703 and 717) to accommodate the religious practices of employees and prospective employees. This section does not address other obligations under Title VII not to discriminate on grounds of religion, nor other provisions of Title VII. This section is not intended to limit any additional obligations to accommodate religious practices which may exist pursuant to constitutional, or other statutory provisions; neither is it intended to provide guidance for statutes which require accommodation on bases other than religion such as § 503 of the Rehabilitation Act of 1973. The legal principles which have been developed with respect to discrimination prohibited by Title VII on the bases of race, color, sex, and national origin also apply to religious discrimination in all circumstances other than where an accommodation is required.

(b) *Duty to accommodate.*

(1) Section 701(j) makes it an unlawful employment practice under § 703(a)(1) for an employer to fail to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business.[2]

(2) Section 701(j) in conjunction with § 703(c), imposes an obligation on a labor organization to reasonably accommodate the religious practices of an employee or prospective employee, unless the labor organization demonstrates that accommodation would result in undue hardship.

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[2] See *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 74 (1977).

(3) Section 1605.2 is primarily directed to obligations of employers or labor organizations, which are the entities covered by Title VII that will most often be required to make an accommodation. However, the principles of Section 1605.2 also apply when an accommodation can be required of other entities covered by Title VII, such as employment agencies (§ 703(b)) or joint labor-management committees controlling apprenticeship or other training or retraining (§ 703(d)). (See, for example, § 1605.3(a) "Scheduling of Tests or Other Selection Procedures.")

(c) *Reasonable Accommodation.*

(1) After an employee or prospective employee notifies the employer or labor organization of his or her need for a religious accommodation, the employer or labor organization has an obligation to reasonably accommodate the individual's religious practices. A refusal to accommodate is justified only when an employer or labor organization can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation. A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.

(2) When there is more than one method of accommodation available which would not cause undue hardship, the Commission will determine whether the accommodation offered is reasonable by examining:

(i) The alternatives for accommodation considered by the employer or labor organization; and

(ii) The alternatives for accommodation, if any, actually offered to the individual requiring accommodation. Some alternatives for accommodating religious practices might disadvantage the individual with respect to his or her employment opportunities such as compensation, terms, conditions, or privileges of employment. Therefore, when there

is more than one means of accommodation which would not cause undue hardship, the employer or labor organization must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities.

(d) *Alternatives for Accommodating Religious Practices.*

(1) Employees and prospective employees most frequently request an accommodation because their religious practices conflict with their work schedules. The following subsections are some means of accommodating the conflict between work schedules and religious practices which the Commission believes that employers and labor organizations should consider as part of the obligation to accommodate and which the Commission will consider in investigating a charge. These are not intended to be all-inclusive. There are often other alternatives which would reasonably accommodate an individual's religious practices when they conflict with a work schedule. There are also employment practices besides work scheduling which may conflict with religious practices and cause an individual to request an accommodation. See, for example, the Commission's finding number (3) from its Hearings on Religious Discrimination, in Appendix A to §§ 1605.2 and 1605.3. The principles expressed in these Guidelines apply as well to such requests for accommodation.

(i) Voluntary Substitutes and "Swaps".

Reasonable accommodation without undue hardship is generally possible where a voluntary substitute with substantially similar qualifications is available. One means of substitution is the voluntary swap. In a number of cases, the securing of a substitute has been left entirely up to the individual seeking the accommodation. The Commission believes that the obligation to accommodate requires that employers and labor organizations facilitate the securing of a voluntary substitute with substantially similar qualifications. Some means of doing this which employers and

labor organizations should consider are: to publicize policies regarding accommodation and voluntary substitution; to promote an atmosphere in which such substitutions are favorably regarded; to provide a central file, bulletin board or other means for matching voluntary substitutes with positions for which substitutes are needed.

(ii) Flexible Scheduling.

One means of providing reasonable accommodation for the religious practices of employees or prospective employees which employers and labor organizations should consider is the creation of a flexible work schedule for individuals requesting accommodation.

The following list is an example of areas in which flexibility might be introduced: flexible arrival and departure times; floating or optional holidays; flexible work breaks; use of lunch time in exchange for early departure; staggered work hours; and permitting an employee to make up time lost due to the observance of religious practices.[3]

(iii) Lateral Transfer and Change of Job Assignments.

When an employee cannot be accommodated either as to his or her entire job or an assignment within the job, employers and labor organizations should consider whether or not it is possible to change the job assignment or give the employee a lateral transfer.

(2) Payment of Dues to a Labor Organization.

Some collective bargaining agreements include a provision that each employee must join the labor organization or pay the labor organization a sum equivalent to dues. When an employee's religious practices do not permit com-

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[3] On September 29, 1978, Congress enacted such a provision for the accommodation of Federal employees' religious practices. See Pub. L. 95-390. 5 U.S.C. 5530a, "Compensatory Time Off for Religious Observances."

pliance with such a provision, the labor organization should accommodate the employee by not requiring the employee to join the organization and by permitting him or her to donate a sum equivalent to dues to a charitable organization.

(e) Undue Hardship.

(1) Cost.

An employer may assert undue hardship to justify a refusal to accommodate an employee's need to be absent from his or her scheduled duty hours if the employer can demonstrate that the accommodation would require "more than a *de minimis* cost".[4] The Commission will determine what constitutes "more than a *de minimis* cost" with due regard given to the identifiable cost in relation to the size and operating cost of the employer, and the number of individuals who will in fact need a particular accommodation. In general, the Commission interprets this phrase as it was used in the *Hardison* decision to mean that costs similar to the regular payment of premium wages of substitutes, which was at issue in *Hardison,* would constitute undue hardship. However, the Commission will presume that the infrequent payment of premium wages for a substitute or the payment of premium wages while a more permanent accommodation is being sought are costs which an employer can be required to bear as a means of providing a reasonable accommodation. Further, the Commission will presume that generally, the payment of administrative costs necessary for providing the accommodation will not constitute more than a *de minimis* cost. Administrative costs, for example, include those costs involved in rearranging schedules and recording substitutions for payroll purposes.

(2) Seniority Rights. Undue hardship would also be shown where a variance from a bona fide seniority system is

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[4] *Hardison, supra,* 432 U.S. at 84.

necessary in order to accommodate an employee's religious practices when doing so would deny another employee his or her job or shift preference guaranteed by that system. *Hardison, supra,* 432 U.S. at 80. Arrangements for voluntary substitutes and swaps (see paragraph (d)(1)(i) of this section) do not constitute an undue hardship to the extent the arrangements do not violate a bona fide seniority system. Nothing in the Statute or these Guidelines precludes an employer and a union from including arrangements for voluntary substitutes and swaps as part of a collective bargaining agreement.

§ 1605.3 Selection practices.

(a) Scheduling of Tests or Other Selection Procedures. When a test or other selection procedure is scheduled at a time when an employee or prospective employee cannot attend because of his or her religious practices, the user of the test should be aware that the principles enunciated in these guidelines apply and that it has an obligation to accommodate such employee or prospective employee unless undue hardship would result.

(b) Inquiries Which Determine An Applicant's Availability to Work During An Employer's Scheduled Working Hours.

(1) The duty to accommodate pertains to prospective employees as well as current employees. Consequently, an employer may not permit an applicant's need for a religious accommodation to affect in any way its decision whether to hire the applicant unless it can demonstrate that it cannot reasonably accommodate the applicant's religious practices without undue hardship.

(2) As a result of the oral and written testimony submitted at the Commission's Hearings on Religious Discrimination, discussions with representatives of organizations interested in the issue of religious discrimination, and the comments received from the public on

these Guidelines as proposed, the Commission has concluded that the use of pre-selection inquiries which determine an applicant's availability has an exclusionary effect on the employment opportunities of persons with certain religious practices. The use of such inquiries will, therefore, be considered to violate Title VII unless the employer can show that it:

(i) Did not have an exclusionary effect on its employees or prospective employees needing an accommodation for the same religious practices; or

(ii) Was otherwise justified by business necessity.

Employers who believe they have a legitimate interest in knowing the availability of their applicants prior to selection must consider procedures which would serve this interest and which would have a lesser exclusionary effect on persons whose religious practices need accommodation. An example of such a procedure is for the employer to state the normal work hours for the job and, after making it clear to the applicant that he or she is not required to indicate the need for any absences for religious practices during the scheduled work hours, ask the applicant whether he or she is otherwise available to work those hours. Then, after a position is offered, but before the applicant is hired, the employer can inquire into the need for a religious accommodation and determine, according to the principles of these Guidelines, whether an accommodation is possible. This type of inquiry would provide an employer with information concerning the availability of most of its applicants, while deferring until after a position is offered the identification of the usually small number of applicants who require an accommodation.

(3) The Commission will infer that the need for an accommodation discriminatorily influenced a decision to reject an applicant when: (i) prior to an offer of employment the employer makes an inquiry into an applicant's availability without having a business necessity justification;

and (ii) after the employer has determined the applicant's need for an accommodation, the employer rejects a qualified applicant. The burden is then on the employer to demonstrate that factors other than the need for an accommodation were the reason for rejecting the qualified applicant, or that a reasonable accommodation without undue hardship was not possible.